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ABSTRACT

This audit examined a case of potential conflict of interest in the School of Pharmacy at the State University of New York (SUNY) at Buffalo. In 1992 a professor in the Department of Pharmacy Practice, which conducts grant-funded drug research, created Pharmaceutical Outcomes Research, Incorporated (PhOR), a private, for-profit corporation that also conducted drug research. In February 1994 this professor became chairman of the department. It was alleged that a computer network had been removed from the department to PhOR offices where it was used to obtain research monies that may have otherwise gone to the university, and that department faculty and staff time had been inappropriately diverted to benefit PhOR. An investigation found that the professor in question admitted to removing the computer network to PhOR offices and using the equipment to work on both university and PhOR grants. It was also found that drug research grant funding for the department declined from $428,000 to virtually nothing during the period while grant funding for PhOR increased substantially. The professor subsequently resigned, and the matter was referred to the state attorney general's office. Two appendixes contain a list of contributors and SUNY Buffalo's response to the report. (MDM)

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State of New York
Office of the State Comptroller
Division of Management Audit

THE UNIVERSITY OF NEW YORK AT BUFFALO

POTENTIAL CONFLICT OF INTEREST IN THE SCHOOL OF PHARMACY

H. Carl McCall
Comptroller

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State of New York
Office of the State Comptroller

Division of Management Audit

Report 95-D-50

Dr. John W. Ryan
Interim Chancellor
State University of New York
Sate University Plaza
Albany, New York 12246

Dear Dr. Ryan:

The following describes the results of our review of a potential conflict of interest in the State University of New York at Buffalo's School of Pharmacy.

This review was performed pursuant to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of Management Audit

February 3, 1997

In an effort to reduce the costs of printing, if you wish your name to be deleted from our mailing list or if your address has changed, contact Raymond W. Cecot at (518) 474-3271 or at the Office of the State Comptroller, Alfred E. Smith State Office Building, 13th Floor, Albany, NY 12236.

Executive Summary

State University Of New York At Buffalo Potential Conflict Of Interest In The School Of Pharmacy

Scope of Review

The State University of New York at Buffalo (University) operates a School of Pharmacy, which includes a Department of Pharmacy Practice (Department). In addition to its teaching duties, the Department conducts research on the effects of different drugs. This research is funded in part by outside grants. In 1992, a professor in the Department created Pharmaceutical Outcomes Research, Incorporated (PhOR), a private, for-profit corporation that also conducts drug research. In February 1994 this professor became the chairman of the Department, and he served in that position until January 1, 1996. In October of 1995, we received a letter alleging that a computer network had been removed from the Department and moved off campus to PhOR offices where it was used to obtain pharmaceutical research monies that may have otherwise gone to the University. The letter further alleged that Department faculty and staff time had been inappropriately diverted to the benefit of PhOR.

In response to the allegations contained in this letter, we conducted a review that addressed the following question:

- Is there merit to these allegations (see pages 2 and 3 for specific questions addressed)?

Observations and Conclusions

We conclude that there is merit to some of the allegations, while the merit of other allegations could not be determined with certainty by our auditors. We suggest actions that need to be taken if the problems identified by the allegations are to be satisfactorily resolved.

We reviewed the research grants received by the Department and PhOR. We found that, between the 1992-93 and 1995-96 fiscal years, the grant funding received by the Department to study the effects of specific drugs declined from $428,000 to virtually nothing. During the same period, the grant funding received by PhOR to study the effects of specific drugs reportedly increased from $493,000 to $856,000. Moreover, some of the grants awarded to PhOR were similar to the grants that previously had been awarded to the Department. (See pp. 5-6)

The Department developed a computer network to help study the effects of specific drugs at hospitals across the country. The former Chairman told us he moved the network's computer equipment off campus to PhOR offices in the Spring of 1993, and kept the equipment at these offices until the Fall of 1995, because there was not enough room for the equipment at the University. He told us he used the equipment to work on grants for both PhOR and the University. We also identified $2,600

in grant funds that were awarded to the Department but were used for PhOR expenses by the former Chairman, as well as an additional $6,000 in grant funds that were awarded to the Department but may have been used to some extent for PhOR expenses by the former Chairman. We could not determine with certainty whether these latter expenses pertained to PhOR because there were no records available for us to make such a determination. (See pp. 6-8)

In addition to the former Chairman, we identified two individuals who were working for PhOR while they were employed by the Department, and two other individuals who may have done so. (All four individuals subsequently resigned from the Department and continued to work for PhOR.) Two of these individuals were eventually made part owners of PhOR. We could not conclusively determine whether the University employees performed private corporation work on University time, because neither the Department nor PhOR maintained sufficient records to show that there was no overlap in the time spent by their employees. (See pp. 8-9)

The State Ethics Commission defines conflict of interest in the University setting as situations in which academic employees may influence the University's business, research or other decisions in ways that could lead to personal gain and to the University's detriment. We believe the actions taken by the former Chairman with respect to PhOR may represent just such a conflict of interest, as he used Department equipment and funds and may have used Department employees to compete with the University for grant funds on behalf of a private corporation that he created and owned. Furthermore, the former Chairman's association with the Department helped him to establish contacts with pharmaceutical companies and hospitals nationwide, and these contacts were instrumental to the success of PhOR in attracting research grants. (See pp. 11-12)

Subsequent to the conclusion of our review, University officials advised us that former Chairman resigned effective September 16, 1996. We suggest the officials determine whether restitution should be sought from the former Chairman for the equipment and funds that he used, and whether the existing policies and practices relating to conflict of interest adequately protect the interests of the State University of New York. Finally, we suggest that SUNY and University officials should refer the matters described in this report to either the Erie County District Attorney or the New York State Attorney General for further investigation. SUNY should also advise investigators to contact the State Comptroller's Office for further information about this matter.

Comments of SUNY Officials

University officials generally agreed with our suggestions. They noted that, although the former chairman resigned from his University position as of September 16, 1996, the University intends to refer this matter to the Attorney General for further investigation.

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Introduction

Background

The State University of New York at Buffalo (University) is one of four university centers operated by the State University of New York (SUNY). The University provides undergraduate and graduate programs, and conducts research funded, in part, by outside grants. During the year ended June 30, 1995, such grants totaled about $128.3 million. Many of these grants are administered by UB Foundation Services, Inc. and the Research Foundation of the State University of New York, which are not-for-profit organizations associated with SUNY. Since conducting research is part of the University's mission, it is critical for the University to obtain outside research grants. Such grants are also considered important to the University's prestige and are said by SUNY officials to enrich the academic programs provided to students.

The University operates a School of Pharmacy, which includes a Department of Pharmacy Practice (Department). The Department provides courses as well as practical experience in dispensing drugs in response to disease, and conducts research on the effects of specific drugs in the treatment of disease. During 1995, the Department had seven full-time faculty, eight part-time faculty and three support staff.

In 1986, the Department established its Drug Surveillance Network within its Center for Pharmacoepidemiology (pharmacoepidemiology is the study of the effect of drugs in relation to disease). The Network facilitates data and information sharing by clinical pharmacists performing pharmacoepidemiology research in hospitals nationwide. Between 1989 and 1993, the Center for Pharmacoepidemiology used the Network on ten projects that were funded by grants awarded to the University.

In 1994, the Department Chairman developed a long-term plan for the Department ("A Blueprint for Pharmaceutical Outcomes Research in the Year 2000: Development and Implementation") that sought to "establish an innovative model for health care delivery founded on the principles of pharmaceutical outcomes research." Since pharmaceutical outcomes research relates to the study of the effect of drugs in relation to disease, the Drug Surveillance Network is critical to the Department's long-term plan.

The Chairman assumed his duties in February 1994. In 1992, when he was still an Associate Professor in the Department, he created Pharmaceutical Outcomes Research, Incorporated (PhOR), a private, for-profit corporation that conducts the same kind of research as the Department conducts with the Drug Surveillance Network. As of January 15, 1996, PhOR had 15 full-time equivalent employees, and for the three years ended December 31, 1995, PhOR averaged $730,000 in annual revenues. PhOR's offices are located off campus.

In October of 1995, the New York State Comptroller's Office received a letter alleging that, since 1992, Department resources (faculty and staff time as well as computer equipment) had been inappropriately diverted to the benefit of PhOR. The letter specifically alleged that the Drug Surveillance Network had been removed from the Department and used for PhOR operations. The letter further asserted that certain research grant funds were no longer awarded to the University, but were instead awarded to PhOR.

Effective January 1, 1996, the Chairman resigned his duties as Chairman and assumed a part-time faculty position (82 percent of a full-time position) with the School of Pharmacy. Subsequent to the conclusion of our review, University officials advised us that the Chairman resigned as of September 16, 1996.

Scope, Objective and Methodology of Review

In response to the allegations contained in the letter of October 1995, we reviewed selected aspects of the Department's operations for the period July 1, 1992 through January 31, 1996. Our objective was to determine whether there was merit to the allegations. In particular, we addressed the following questions:

- Did PhOR obtain pharmaceutical research monies that may have otherwise gone to the University?
- Was the Drug Surveillance Network used by PhOR? Were grant funds awarded to the University used instead by PhOR?
- Were any individuals employed simultaneously by the Department and PhOR and, if so, did they perform private corporation work on University time?
- Did the former Chairman adequately fulfill his duties as Department Chairman?

- When did University officials learn about the former Chairman's involvement in PhOR and what did they do in response to this involvement?

- Did the former Chairman comply with applicable laws, rules and regulations relating to conflict of interest?

To accomplish our objective, we reviewed selected records and applicable policies, procedures, rules and regulations of the University, UB Foundation Services, Inc. and the Research Foundation of the State University of New York. We also interviewed officials and staff of these organizations, including the former Department Chairman. In addition, we reviewed certain records of PhOR as provided to us by the former Chairman in his capacity as PhOR President and Chief Operating Officer.

An audit includes the independent review and assessment of internal controls as a basis for determining audit tests of accounting records and transactions. These procedures are necessary to enable the auditor to report on compliance with internal control requirements and to render an opinion on operations and activities in accordance with generally accepted government auditing standards. The scope of our work did not include an independent review and assessment of internal controls. Consequently, our work does not constitute an audit as defined by generally accepted government auditing standards.

Response of SUNY Officials to Review

A draft copy of this review was provided to SUNY officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix B. Certain matters addressed in our draft report were revised or deleted from the final report. Therefore, some University comments included in Appendix B may relate to matters no longer contained in this report.

Results of Review

As described by the following answers to the six questions posed earlier in this report, we find there is merit to some of the allegations made in the October 1995 letter, while the merit to the other allegations could not be determined with certainty by our auditors. In the conclusion and recommendations section of this report, we suggest actions that need to be taken by University and SUNY officials if the problems identified by the allegations are to be satisfactorily resolved.

Did PhOR obtain pharmaceutical research monies that may have otherwise gone to the University?

In fiscal year 1992-93, the University had nine active grants for pharmaceutical outcome research projects that used the Drug Surveillance Network. During the 1992-93 fiscal year, the grant budgets for these projects totaled about $429,000. However, since that time, grant funding for such projects has shrunk until virtually no such grant funding was received during the 1995-96 fiscal year. In fact, the former Department Chairman did not even apply for such funding after the 1994-95 fiscal year. Over this same period, PhOR reports that its research grant revenues increased from $492,961 in 1993 to $841,635 in 1994 to $855,755 in 1995.

We examined the nature of the grants awarded to the University and to PhOR and found that some of the grants were similar in nature; in some instances PhOR received grants to study drugs that were previously studied through grants awarded to the University. For example, in 1992, the University studied the drug Mivacron with a grant from the Burroughs-Wellcome Company. The University received no additional funding beyond 1992 for this study. However, in 1993 and 1995 PhOR received grants from the Glaxo-Wellcome Company to study Mivacron. In 1992, the University received a grant from the Burroughs-Wellcome Company to study the drug Lamotrigine. PhOR also received a grant from this company to study this drug, but we were unable to establish when this grant was received by PhOR. In addition, in conducting a study on the drug Diprivan, it appears that PhOR continued research previously performed by the University. We also note that the research conducted by both the University and PhOR made extensive use of the same software program, which further suggests that the nature of the research was similar.

We therefore conclude there appears to be merit to the allegation that PhOR obtained pharmaceutical research monies that may have otherwise gone to the University. Since such research grants are said by SUNY officials to enhance SUNY's reputation and enrich the academic programs provided to students, we believe the loss of such grants may result in a loss of prestige to SUNY and an impoverishment of the academic programs provided to the pharmacy students at the University.

Subsequent to the completion of our review, University officials told us that the former Chairman has obtained a grant for the University which is for $1.6 million and starts in the 1996-97 fiscal year.

Was the Drug Surveillance Network used by PhOR? Were grant funds awarded to the University used instead by PhOR?

The Drug Surveillance Network represents a mailing list of hospital-based clinical pharmacists distributed across the United States. This is a loosely organized group whose purpose is to collect data on adverse drug events which is accumulated and maintained in a computer database and used for statistical analysis. The Department used three computers, one printer, two monitors, and a disk sub-system to maintain the database developed through the Drug Surveillance Network. The equipment alone cost more than $18,000.

The former Chairman told us that he moved this equipment to PhOR offices in the Spring of 1993, because there was not enough room for the equipment in Cooke Hall at the University. The former Chairman told us he used the equipment to work on both PhOR and University grants. He told us he returned the equipment to the Department in the Fall of 1995, because work on the University grants had been completed and space became available at Cooke Hall.

In January 1996, we confirmed that the equipment had been returned to the Department. However, we were not able to determine the date that the equipment was returned because, contrary to University requirements, this information was not indicated on the forms that authorized the removal of the equipment from the University. Furthermore, the Property Control Department did not have records that indicated when the equipment was returned. However, University officials maintain that the equipment was returned to the University by October 1995.

We reviewed grant records maintained by the University, UB Foundation Services, Inc., and the Research Foundation of the State University of New York to determine whether PhOR expenses were inappropriately charged to University grants. We identified one instance where the University improperly paid for a PhOR expense, as follows:

- During May and June of 1993, the former Chairman used more than $2,600 in Department grant monies to pay for computer programming and debugging services that were performed at PhOR's address and were for PhOR's benefit.

University officials agreed with this finding. They advised us that the former Chairman told them that he inadvertently misapplied these expenditures against Department grant monies since the consulting company utilized was involved in a number of projects at both PhOR and the University.

We also identified more than $6,000 in grant funds that were awarded to the Department but may have been used by the former Chairman for PhOR expenses, as shown by the following examples.

- During 1993, the University paid $1,827 in phone charges billed to the Center for Pharmacoepidemiology for a 1-800 line for the Drug Surveillance Network. However, a customer service representative of the telephone company told us that the service line was installed at PhOR's address. We note that, in a project proposal prepared by PhOR in June 1993 for submittal to a pharmaceutical company, the 1-800 number was described as available to answer physician questions and handle certain logistics.

- The former Chairman used $1,995 in Department grant monies to pay for his registration at a workshop in June of 1995. On the workshop form, the former Chairman registered as the President of PhOR and listed PhOR's phone number.

- The former Chairman used Department grant monies of $771 in 1993 and $702 in 1995 to pay for the services of two consultants. However, these consultants had billed PhOR for their services.

- Over a three-year period, the former Chairman used $957 in Department grant monies to rent postage equipment that was installed at PhOR's address.

In each of the above instances, University officials have indicated to us that they believe these grant monies were used to support expenditures related to the former Chairman's research work conducted at PhOR as a faculty member. However, we are unable to determine with certainty whether these were either PhOR or Department expenses because there were no available records for us to use to make such a determination.

We therefore conclude, that both Drug Surveillance Network equipment and at least $2,600 of Department grant funds were used by PhOR. The use of Department resources reduced the costs incurred by PhOR.

Were any individuals employed simultaneously by the Department and PhOR and, if so, did they perform private corporation work on University time?

Four individuals quit full-time employment in the Department on December 31, 1993. According to the former Chairman, these four individuals began working at PhOR on January 3, 1994. However, when we reviewed PhOR records, we found that two of these four employees were working for PhOR at least some of the time during 1993, while they were still employed full-time by the Department, as follows.

- According to PhOR records, one Department employee developed a highly detailed project proposal for PhOR in June of 1993. The former Chairman filed a W-2 form indicating PhOR paid this employee $12,975 during 1993, and on October 1, 1993, the former Chairman made this employee a Vice-President and 25 percent owner of the corporation.

- According to PhOR records, a second Department employee worked more than 300 hours in 1993 on three PhOR projects. In 1993, PhOR charged pharmaceutical companies $15,856 for this employee's work and filed a W-2 form for the employee (the W-2 form was filed in the amount of $5,590). Moreover, according to PhOR records, in 1992 this employee was budgeted to work for $6,540 (a W-2 form was not filed for this employee in 1992). On October 1, 1993, the former Chairman made this

employee a Vice-President and 10 percent owner of the corporation.

We found that the other two employees may have worked for PhOR for at least some of the time in 1993, as follows.

- On a project proposal dated November 10, 1993 prepared by PhOR for submittal to a pharmaceutical company, the former Chairman referred to a third Department employee as "our computer systems manager." PhOR did not file a W-2 form for this employee for 1993 and we were not able to determine whether this University employee actually worked for PhOR in 1993.

- According to PhOR records, a fourth Department employee worked as a secretary on at least seven PhOR documents during 1993. In an official letter about Department business dated December 1993, this employee indicated that she could be reached at PhOR's phone number. PhOR did not file a W-2 form for this employee for 1993 and we were not able to determine whether this University employee actually worked for PhOR in 1993.

We therefore conclude that two individuals were employed simultaneously by PhOR and the Department, and two others may have been. However, we could not conclusively determine whether individuals employed simultaneously by PhOR and the University actually performed private corporation work on University time. This is because neither the University nor PhOR maintained detailed schedules supporting that there was no overlap in the scheduled work hours of University employees.

In this situation where the former Chairman directed the work of the same employees in both the PhOR and University settings, maintaining detailed work schedules of employees' hours and activities would be a reasonable approach to avoid even the appearance of conflict of interest. However, given the lack of detailed schedules, it is conceivable that University staff time may have been spent on PhOR activities.

Did the former Chairman adequately fulfill his duties as Department Chairman?

The letter to the Comptroller alleges that the former Chairman was inaccessible because he was on site at the Department on Wednesdays only and spent much of his time at his private corporation. The former

Chairman confirmed to us that he generally was at the Department on Wednesdays only. However, he said that he also spent a considerable amount of time off campus engaged in Department activities such as supervising students receiving practical experience and establishing linkages between the University and area hospitals and clinics. The former Chairman told us that, while he did not post his schedule on his office door, he could be reached through voice mail, and would arrange to meet promptly with any students or faculty who wanted to meet.

We asked the former Dean of the School of Pharmacy, who was the former Chairman's supervisor until the Dean resigned in October of 1995, if he could tell us about the former Chairman's schedule. The Dean said he had no way of knowing about the former Chairman's schedule because he did not monitor day-to-day faculty activities. In addition, the University does not routinely record day-to-day faculty activities. As a result, we were not able to evaluate how the former Chairman spent his time.

We therefore cannot determine whether the former Chairman adequately fulfilled his duties as Department Chairman. However, we question whether the former Chairman was able to give sufficient attention to the Department while running a business with about 15 full-time-equivalent employees and average annual revenues of about $730,000. We believe that closer monitoring of the former Chairman's time was warranted in this situation due to the conflict of interest between the University and PhOR.

When did University officials learn about the former Chairman's involvement in PhOR and what did they do in response to this involvement?

Whenever a faculty member applies for a research grant, either a Form SUNY-2 (Disclosure Statement for Certain Academic Employees Upon Application for a Sponsored Program Grant or Contract) must be filed with the Dean or the faculty member must certify in writing that a Form SUNY-2 has been filed with the Dean and that information on the form is up-to-date. The form requires that the faculty member disclose, among other things, any position of any type that the faculty member or his/her spouse holds with any organization other than the State University of New York. The Dean certifies that the Form SUNY-2 is on file and has been reviewed. The Dean is then required to report to the Office of the Vice President for Research, based on his review of the form, those faculty activities that may constitute a conflict of interest.

We found that, in October 1993, the former Chairman formally notified the Dean of the School of Pharmacy about his involvement in PhOR, as required. However, the Vice President for Research told us he first learned about the former Chairman's involvement in PhOR in April of 1995. University officials told us that they then started to negotiate an agreement with the former Chairman to protect the interests of the University with respect to PhOR. However, the formal memorandum of agreement was not fully executed until December 14, 1995, two weeks after SUNY officials wrote a letter to University officials informing them about the letter of complaint. University officials told us the agreement was delayed because the person in the Office of Research working on the agreement was injured in October 1995 and could not return to work until December 1995.

The memorandum of agreement requires the Dean of the School of Pharmacy to review each grant sought by PhOR to determine whether the grant is appropriate for PhOR or appropriate for the University. However, the criteria to be used by the Dean in making these determinations and which are attached to the memorandum of agreement as appendices were developed by the former Chairman and owner of PhOR. One appendix lists the scope of grant activities appropriate for PhOR, while the other appendix lists the activities appropriate for the Department. Because such an important part of the memorandum of agreement was developed by the former Chairman, we questioned whether the agreement protected the interests of the University, or whether it protected the interests of the former Chairman and PhOR.

University officials contend that the memorandum of agreement adequately protected the University. In fact, University officials stated that, in his resignation letter of August 14, 1996, the former Chairman cited disagreement with the University's decision regarding two recent projects he submitted for evaluation under the terms of the memorandum. We continue to maintain that criteria developed by a person with conflicting interests may not adequately address University interests.

Did the former Chairman comply with applicable laws, rules and regulations relating to conflict of interest?

The State Ethics Commission defines conflict of interest in the University setting as situations in which an academic employee is or may be in a position to influence the University's business, research or other decisions in ways that could lead to personal gain and to the University's detriment. For example, a State (University) employee is not permitted

to accept other employment which will impair his independence of judgment in the exercise of his official duties. Also, a State employee is not permitted to accept employment which will require him to disclose confidential information gained from his official position, or to use or attempt to use his official position to secure unwarranted privileges. In addition, a State employee is not permitted to engage in any business activity that might reasonably tend to conflict with the proper discharge of his official duties, or invest in businesses which will create substantial conflict between his duty in the public interest and his private interest. Finally, a State employee must pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust. To control such conflicts of interest, SUNY faculty of a certain salary or higher are required to file an annual financial disclosure statement listing the nature and source of any outside employment, as well as investment and business interests.

We found that the former Chairman filed the annual financial disclosure statements, as required. As these disclosures were not elevated to the Vice President for Research, it would appear that this issue was not considered to be a conflict of interest. However, considering the potential competing interests of the Department and PhOR, we believe the former Chairman's involvement in PhOR may represent a conflict of interest as defined by the State Ethics Commission. The former Chairman's association with the Drug Surveillance Network helped him to establish relationships with pharmaceutical companies and 600 clinical pharmacists at 381 hospitals nationwide, and these relationships were critical to the success of PhOR in attracting research grants.

Conclusion & Recommendations

Conclusion

We conclude there is merit to some of the allegations made in the letter sent to the Comptroller's Office, while the merit of the other allegations could not be determined with certainty by our auditors. If the problems identified by these allegations are to be satisfactorily resolved, the following actions need to be taken.

Recommendations

1. Draft report recommendation was deleted.

2. Draft report recommendation was deleted.

3. University officials should determine whether PhOR should reimburse the University for the University equipment and grant funds that were used by PhOR.

4. University officials should determine what actions are needed to ensure that the Pharmacy Department obtains sufficient research grants to support Department objectives.

5. SUNY officials should determine whether SUNY needs to strengthen its policies and procedures to adequately protect the interests of SUNY when faculty operate private corporations that compete with SUNY for grant funds.

6. SUNY and University officials should refer the matters described in this report to the State Ethics Commission and either the Erie County District Attorney or the New York State Attorney General for further investigation. SUNY should also advise investigators to contact the State Comptroller's Office for further information about this matter.

   (University officials, in responding to the draft of this report, have correctly informed us that, since the former Chairman is no longer employed by the State, the State Ethics Commission has no jurisdiction over him. However, the University intends to refer the matter to the Attorney General for further investigation.)

Major Contributors to This Report

Jerry Barber
Frank Houston
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October 25, 1996

Mr. Robert H. Attmore
Deputy Comptroller
Office of the State Comptroller
The State Office Building
Albany, New York 12236

Dear Bob:

In accordance with Section 170 of the Executive Law, we are enclosing the comments of State University of New York at Buffalo and SUNY System Administration regarding the draft audit report on Potential Conflict of Interest in the School of Pharmacy, State University of New York at Buffalo (95-D-50).

Sincerely,

William H. Anslow
Senior Vice Chancellor
for Finance and Management

Enc.

Appendix B

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STATE UNIVERSITY OF NEW YORK AT BUFFALO
POTENTIAL CONFLICT OF INTEREST IN THE SCHOOL OF PHARMACY
REPORT 95-D-50

Response to Recommendations

(OSC) 1. University officials should independently review the memorandum of agreement with the former Chairman to ensure that it adequately protects the interests of the University.

(SUNYB) 1. Not Applicable - The Vice President for Research first learned of the former Chairman's involvement in PhOR in late April, 1995. This was six months prior to the point at which the University was notified by the Office of the State Comptroller that a complaint had been filed concerning the former Chairman. On May 15, 1995 at a meeting with the former Chairman, the Dean of the School of Pharmacy (Dean) and the Vice President for Research, the former Chairman was informed that his involvement with PhOR was contrary to Section 74 (Code of Ethics) of the Public Officers Law. The former Chairman was further informed that there were three possible remedies to his conflict of interest: (1) disengage himself from PhOR; (2) resign from his faculty position at the University; or (3) enter into an agreement with the University that would distinguish his research responsibilities as a University faculty member from the business of PhOR and that would require prior University approval of all further work to be undertaken by PhOR. A draft Memorandum of Agreement (MA) between the University and the former Chairman was prepared in late May, 1995. Several drafts of the MA were exchanged during the period May though December 1995. The former Chairman signed the MA on December 8, 1995 and University officials signed it on December 14, 1995.

We believe the MA adequately protected the interests of the University during the period it was in effect. To illustrate, there were two projects submitted by the former Chairman prior to his letter of resignation of August 14, 1996 which were evaluated by the Dean and determined to be projects which should be administered by the University, not PhOR. The former Chairman referred to these projects in his letter of resignation pointing out that he disagreed with the Dean's interpretation and application of the MA. Given the former Chairman's resignation, as of September 16, 1996, the MA is no longer in effect.

(OSC) 2. University officials should review the current faculty status of the former Chairman to ensure that his involvement with PhOR is not inconsistent with the interests of the University.

(SUNYB) 2. Not Applicable - As stated above, the former Chairman resigned from the University effective September 16, 1996.

(SUNY) 1,2. We agree with SUNY at Buffalo that these two recommendations are no longer applicable.

(OSC) 3. University officials should determine whether PhOR should reimburse the University for the University equipment and grant funds that were used by PhOR.

(SUNYB) 3. We Agree - The findings of the State auditors and the University Internal Audit Department will be reviewed with State University legal counsel to determine appropriate action.

(OSC) 4. University officials should determine what actions are needed to ensure that the Pharmacy Department obtains sufficient research grants to support Department objectives.

(SUNYB) 4. We Agree - Sponsored research in the Department of Pharmacy Practice is an essential component of the Department's mission. The level of sponsored activity has been substantially increased since 1991 when the total amount of sponsored activity was just under $350,000. For the year ended June 30, 1996, the total level of sponsored activity was $1,102,700. The Department of Pharmacy Practice will continue to seek external sponsorship for research consistent with Departmental goals and objectives.

(SUNY) 3,4. We agree with the recommendations and the responses.

(OSC) 5. SUNY officials should determine whether SUNY needs to strengthen its policies and procedures to adequately protect the interests of SUNY when faculty operate private corporations that compete with SUNY for grant funds.

(SUNYB) 5. We Agree - The University at Buffalo is committed to protecting the interests of the University when faculty operate private business enterprises that in any way conflict with University interests. The University at Buffalo recently (October 1995) addressed this concern by updating and strengthening its policies covering investigator disclosure.

(SUNY) 5. We have reviewed the SUNY Conflict of Interest policy, the policy regarding the conduct of research utilizing the Research Foundation of SUNY, the guidance relating to implementation of these policies and the supplementations to the policies that are in effect at the University at Buffalo. We have concluded that there is not a need for policy revision at this time.

(OSC) 6. SUNY and University officials should refer the matters described in this report to the State Ethics Commission and either the Erie County District Attorney or the New York State Attorney General for further investigation. SUNY should

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also advise each investigative group to contact the State Comptroller's Office for further information about this matter.

(SUNYB) 6. We Agree - The University at Buffalo will refer this matter to State University legal counsel to determine what information needs to be reported to the State Ethics Commission and either the Erie County District Attorney or the New York State Attorney General.

(SUNY) 6. The Office of the State Comptroller recommends referral of the matter to the State Ethics Commission. However, it is our understanding that the individual involved in the audit, the former chair of the department, has resigned from his University position. Accordingly, since the individual is no longer in state service, the State Ethics Commission has no jurisdiction over him in its enforcement of section 74 of the Public Officers Law. Referral to the Commission thus would serve no effective purpose. On the other hand, the University intends to refer the matter to the Criminal Prosecutions Bureau of the Attorney General for further investigation.